



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 20, 1995

Ms. Kelly A. Dempsey  
Assistant City Attorney  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR95-1519

Dear Ms. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28843.

The City of Victoria (the "city") has received a request for three police files relating to allegations of indecency with a child. The requestor is the mother of the alleged child victim. You have submitted the requested information to us for review and claim that section 552.101 of the Government Code excepts it from required public disclosure.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 excepts these files for public disclosure in conjunction with section 34.08 of the Family Code, which provides in pertinent part:

(a) Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

*See also* Open Records Decision Nos. 587 (1991) (holding that section 552.023 of the act cannot operate to give any individual a special right of access to information within the protection of section 34.08 of the Family Code); 440 (1986) (information in Austin Police Department file collected in chapter 34 investigation remains confidential under section 34.08).<sup>1</sup>

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<sup>1</sup>Subsections (b) and (c), which provide for disclosure of investigative materials to adoptive parents and prospective adoptive parents, respectively, are not applicable in this instance.

The alleged perpetrator in this instance was "a person other than a person responsible for a child's care, custody, or welfare." See Fam. Code § 34.012 (defining "[p]erson responsible for a child's care, custody, or welfare"). Section 34.05, which sets forth the standards and procedures for child abuse reports and investigations, provides, in pertinent part:

If the report alleges child abuse or neglect in a location other than a facility operated, licensed, certified, or registered by a state agency and by a person other than a person responsible for a child's care, custody, or welfare, the [Department of Protective and Regulatory Services] is not required to investigate the report. *The appropriate state or local law enforcement agency shall investigate that report if that agency determines an investigation should be conducted.*

Fam. Code § 34.05(a) (emphasis added).

The city advises us that it did not report the allegations of child abuse to the Department of Protective and Regulatory Services (the "department") and that the department did not conduct an investigation of the allegations. Rather, the city, through its police department, concluded that an investigation of the allegations should be conducted. Hence, section 34.05 of the Family Code required the police department to investigate the allegations. The requested information thus relates to an investigation conducted under chapter 34, disclosure of which is authorized only for purposes consistent with the purposes of the Family Code under regulations adopted by the city under section 34.08 of the Family Code. You advise us that the city has not promulgated regulations authorized under section 34.08. Accordingly, the city must withhold the requested information under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/GCK/rho

Ref.: ID# 28843

Enclosures: Submitted documents

cc: Ms. Laura Mabry  
3307 Woodlaw  
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(w/o enclosures)